

FISCAL NOTE

Bill #: SB0412

Title: Generally revise laws to protect fish and fish habitat

Primary Sponsor: Toole, K

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Expenditures:		
General Fund	\$587,433	\$587,433
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	(\$587,433)	(\$587,433)

- | | |
|---|---|
| <input type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input checked="" type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

1. The current process for resolving disputes between Natural Streambed and Land Preservation Act (310) permit applicants and conservation districts involves an arbitration process. Districts currently process approximately 20 arbitrations per year at \$10,000 each.
2. It is expected that the number of arbitrations will double to 40, based on increased supervisor modifications of proposed projects resulting from this bill.
3. The Department of Natural Resources and Conservation (DNRC) provides funding for technical, legal and administrative expenses related to conservation district processing of 310 permits, and will require \$200,000 additional funds for conservation districts (\$10,000 x 20).
4. Conservation district modification of projects will result in increased liability to conservation districts resulting from allegations of project failures, property damage, and/or injury. DNRC provides funding for conservation district legal support and will require approximately \$100,000 per year for district and supervisor litigation related to 310 project modifications.
5. Streamside Management Zone law regulates activities in all streams as defined in 77-5-302(7), MCA. DNRC Service Forestry Bureau would assume regulatory responsibility for assessing fisheries impacts and assuring stream crossing fisheries impacts are mitigated for all timber-sale associated, non-perennial stream crossings.

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6. It is expected that Service Forestry Bureau will evaluate and approve 150 stream crossing applications per year.
7. DNRC anticipates Streamside Management Zone violations would increase and DNRC legal cost would be estimated at \$15,000 annually.
8. A fisheries biologist (\$52,382), a surface water hydrologist (\$52,382), and a water resources specialist (\$37,905) would be required in Water Resources, while two fisheries biologists (\$52,382 each) would be required within Forestry Division.
9. Annual personal services expenses for these positions are estimated to be \$247,433 annually.
10. Operating expenses are estimated to be \$40,000 (\$5,000 per FTE annually plus \$15,000 legal costs annually).

FISCAL IMPACT:

	FY 2003 <u>Difference</u>	FY 2004 <u>Difference</u>	FY 2005 <u>Difference</u>
DNRC Program 23			
<u>Expenditures:</u>			
Personal Services		\$247,433	\$247,433
Operating Expenses		40,000	40,000
Grants		300,000	300,000
TOTAL		\$587,433	\$587,433

Funding of Expenditures:

General Fund (01)	\$587,433	\$587,433
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Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$587,433)	(\$587,433)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Conservation districts will be required to participate in an estimated 20 additional arbitration proceedings each year as a result of requirements to modify 310 permit applications beyond existing practices. It is expected that at least some of the 1,500 applicants for 310 permits will challenge required project modifications, which they feel are unreasonable or expensive. It is also expected that supervisor modification of proposed projects will increase district and supervisor liability associated with allegations that required modifications resulted in failures, property damage, and/or injury. Local funds are unavailable to address these impacts.

TECHNICAL NOTES:

1. Proposed language in 75-7-112(9)(b)(vi), MCA, on lines 13-15, page 5, results in conflict and ambiguity within Title 75, Chapter 7, MCA, as follows:
 - It conflicts with 75-7-112(4), MCA. Subsection (4) directs conservation district supervisors to affirm, overrule, or modify the individual team recommendations. The proposed language grants the team final determination and directs supervisors to act based on team determinations.
 - It renders ambiguous the conservation district supervisors' authority and duty to determine if a proposed project is reasonable as stated in 75-7-112(9)(b) and (11), MCA, by directing supervisors to act according to team determinations of effect on fish or aquatic habitat.
 - Current law under 75-7-112(3), MCA, requires each member of the team to "recommend....denial, approval, or modification of the project" The proposed language seems to contemplate a joint team determination, without providing a mechanism to establish it.

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TECHNICAL NOTES: (continued)

2. The additional criteria may require additional expenditures by applicants to submit their applications. They may need to hire biological consultants in addition to the services of hydrological consultants that many already retain.